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ABSTRACT

Classification of government documents (confidential, secret, top secret) is a system used by the executive branch to, in part, protect national security and foreign policy interests. The systematic use of classification markings with precise definitions was established during World War I, and since 1936 major changes in classification have originated with successive presidents. Following President Truman's executive order to formalize a secrecy classification system for nonmilitary agencies, successive presidents through President Carter have gradually decreased the number of agencies authorized to classify information and have improved downgrading and declassification procedures, and promoted easier public access to classified information. Under Executive Order 12356 issued by President Reagan, however, documents now will be easier to classify; higher rather than lower classification levels will be applied when there is any doubt as to a document's confidentiality; and a balancing test weighing the public interest against national security will be eliminated, thus reversing a 30-year trend toward openness in government. The order continues the Carter policy of protecting basic scientific information from classification, but departs sharply from the Nixon and Carter policies by eliminating specific time limits for the declassification of materials. Critics contest the order on the grounds that it will increase, not reduce, government classification, and that classification is used more to hide political bureaucratic blunders than for national security. (HTH)

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GOVERNMENT CLASSIFICATION: AN OVERVIEW

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This report was written by Karen M. Brown, an M.A. graduate of the University of Missouri School of Journalism.

"It is the tendency of things that freedom retreats and government gains ground." — Thomas Jefferson

On April 2, 1982, President Ronald Reagan issued an executive order that critics said reversed a 30-year-old trend toward reducing government secrecy. The order spelling out new government procedures for the classification of documents replaced one signed by President Carter in 1978.

Reagan said his 11-page Executive Order, #12356, "enhances protection for national-security information without permitting excessive classification of documents by the government."

Jack Landau, director of the Reporters' Committee for Freedom of the Press, described the order as outrageous. The order is part of a "foreign affairs secrecy paranoia," he said.

Allan R. Adler, counsel for the Center for National Security Studies, said his organization strongly disagreed with Reagan's assertion that the order would not permit excessive classification: "The clearest indication is that the result of the order will be greater classification. . . .Classification now is mandatory rather than discretionary."[1]

Others also have expressed concern that the order will increase secrecy. Government secrecy, however, is not new in the United States. Before examining the Reagan order and the overall criticisms of classification, let's look at how we came to our present position on national security classification.

THE EARLY YEARS OF SECRECY

"From the start, the American government has been into secrecy," commented Arthur Schlesinger Jr. in 1972. The founding fathers who drafted the Constitution in 1787 met in secret.[2] James Madison, who drafted the First Amendment in 1789, said that no constitution would have been adopted if the Constitutional Convention's debates had been public.[3]

The Federalist, a series of conservative articles published beginning 1787, specified two areas — diplomatic negotiations and intelligenece — in which secrecy seemed essential to uphold the executive branch's right to conduct certain affairs without an immediate obligation to supply Congress with full details.[4]

Meeting privately is one form of government secrecy. Restricting access to government documents is another.

Classification is a system used by the executive branch to, in part, protect national security and foreign policy interests. The system offers several degrees of protection for documents, "confidential," "secret," and "top secret" being the most commonly used. The use of such labels has been traced back to the War of 1812.

The next step in the development of the classification system was the issuance of a series of general orders, the first of which appeared April 1869. That order banned the taking of photographs of Army posts and coastal military installations in the United States. Another general order, issued 28 years later, limited visiting privileges on U.S. military posts to military personnel and members of Congress.

Summary

From the beginning, the United States government has kept secrets. In recent administrations, with the classification system's problems becoming increasingly apparent, the trend had been toward greater openness. President Reagan has changed that.

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THE RISE OF TWENTIETH CENTURY SECRECY

The systematic use of classification markings with precise definitions was established during World War I. The system was patterned after British and French procedures.[5]

Several modifications of the system were incorporated in 1917, 1921, 1935 and 1936. The classification procedures applied only to military information and were found in Army and Navy regulations. Executive agencies, including the State Department, relied upon a 1789 housekeeping statute to withhold information from the public.[6]

Since 1936, major changes in the field of government secrecy have originated with presidents in the form of executive orders, with President Franklin Roosevelt's 1940 Executive Order #8381 being the first such use of an executive order in the classification field.[7] That order applied classification designations and procedures to military and naval installations, equipment, maps, photographs, documents, designs and similar items.

During World War II, the Office of War Information established a government-wide classification system by regulations grounded in Executive Orders #9103 and #9182.[8] The military had its own system based upon the 1940 order.

CLASSIFICATION UNDER TRUMAN, EISENHOWER AND KENNEDY

In 1950, President Harry S Truman issued Executive Order #10104, which revised the Roosevelt order as it applied to military and naval installations and equipment.

Then, in 1951, Truman issued the first order to formalize a secrecy classification system for non-military agencies. Executive Order #10290, which was severely criticized for being too vague, authorized any executive department or agency to uniformly classify information. The order defined classified security information as "official information the safeguarding of which is necessary in the interest of national security, and which is classified for such purposes by appropriate classifying authority."

In 1954, soon after he took office, President Dwight D. Eisenhower replaced the Truman order with his own, Executive Order #10501. Termed the "Bible of secrecy stamping" by retired Pentagon security officer William Florence, the order decreased the number of agencies authorized to classify information by limiting classification to agencies with a direct responsibility for national defense. The order also redefined the "top secret," "secret" and "confidential" classification categories and provided for declassification procedures.

Some observers, including Arthur Schlesinger Jr., asserted Eisenhower's order allowed classification to run rampant because of a lack of effective control over both the classification and declassification of documents. Said U.S. Assistant Attorney General Ralph E. Erickson, "Without an effective administrative system, its well-intended provisions turned out to be empty exhortations for the most part."[9]

The problem was substantially improved by automatic downgrading and declassification procedures provided under President John F. Kennedy's Executive Order #10964, issued in 1961.[10]

The Kennedy order established four categories of information: one that was to be excluded from automatic downgrading because it either encompassed information originating from a foreign government, was covered by statute, or required special handling; the second category was excluded from automatic declassification if the classifier considered the information too sensitive for arbitrary downgrading; the third category covered materials downgraded one level at the end of each 12-year period; the fourth category was for material downgraded every three years and declassified after 12 years.[11]

CLASSIFICATION UNDER PRESIDENT NIXON

President Richard M. Nixon's Executive Order #11652 was designed to remedy defects already apparent in the classification system. His order replaced the Eisenhower order on June 1, 1972, and was the result of more than a year's work by a special interdepartmental committee.

Under his order, guidelines for classification were made more restrictive. Officials in certain executive agencies and departments were authorized to classify information if they believed its "unauthorized disclosure could reasonably be expected to cause damage to the national security."[12] Said then-National Security Adviser Henry Kissinger, "If the classifier has any substantial doubt as to which security classification is appropriate, or as to whether the material should be classified at all, he should designate the less restrictive treatment."

New timetables envisaged automatic declassification after between six and 10 years, with exemptions for particularly sensitive material. Documents exempt from automatic declassification coud be reviewed after 10 years. Any documents classified for 30 years or more would be declassified, with limited exceptions. Materials exempted from declassification could be reviewed after 10 years.

In 1971, a total of 59,316 officials had the authority to classify documents. Nixon's order reduced the number with the authority to stamp materials "top secret" to 1,860. His order also provided for greater individual responsibility by requiring classifiers to sign their names whenever they stamped materials.

Sanctions — basically a strong reprimand — for abuse of the system also were included. A threat in the order that wrongful disclosure of classified information was "recognized in the Federal Criminal Code as providing a basis of prosecution" was described as a deliberate misrepresentation of the law.[13]

Continued monitoring of the system was to be done by the National Security Council and an Interagency Classification Review Committee. Established after the June 1971 publication of the Pentagon Papers — many of which were clearly improperly classified — the ICRC was seen as a direct response to charges of excessive secrecy in government. The committee comprised representatives from the Departments of State, Defense and Justice; the CIA; the Energy Research and Development Administration; and the National Security Council. The committee's task was to limit the number of documents classified and to implement a speed-up in the declassification of documents, many of which dated from World War II.

Although the Nixon order generally was regarded as one

permitting greater access to information than was previously possible, criticisms still were expressed. Access to documents, critics charged, was an uduly burdeonsome task. People seeking access, it was said, had to know exactly what documents they wanted, had to get the department concerned and the original classifier of the information to agree to access, and had to be prepared to contest the matter through the federal courts.

Nixon's order also was faulted for not establishing specific criteria for determining what documents should be protected and for failing to ensure that classified information was deserving of such protection.[14]

SECRECY IN THE FORD AND CARTER ADMINISTRATIONS

Four years later, on October 7, 1976, President Gerald R. Ford amended a May 17, 1972, National Security Council directive on the classification, declassification and safeguarding of national security information. Ford required that each department submit its proposed security regulations to the ICRC for approval. Once approved, all regulations were to be published in the **Federal Register** "to the extent they affect the public."[15]

Each department also had to submit semiannual reports of its actions on classification requests, classification abuses and unauthorized disclosures. Lists of the people having classification authority no longer needed to be submitted to the ICRC.[16]

As a candidate for the presidency, Jimmy Carter promised to conduct an open administration if elected. On June 29, 1978, President Carter issued Executive Order 12065, designed to increase openness in government by tightening the ground rules for the classification of documents.

The order was initiated by CIA Director Stansfield Turner and National Security Advisor Zbigniew Brzezinski, whom Carter aides said believed that government was so overwhelmed with intelligence information that it was difficult to distinguish between truly sensitive and less-important material.

Carter's order attempted to increase protection for national security information while allowing public access to documents through a strong declassification program. For the first time, an executive order dealing with classification was circulated to agencies, congressional committees and interested government groups prior to its release.

Also for the first time, broad categories were established for information that could be classified if disclosure would cause "identifiable damage" to national security. Information could not be classified unless it concerned foreign government information; intelligence activities, sources or methods; foreign relations or foreign activities in the United States; scientific, technological or economic matters relating to national security; U.S. government programs for safeguarding nuclear materials or facilities; and other categories of information the president or his designate decided warranted protection.[17]

Carter's order said that, except as provided in the Atomic Energy Act of 1954 as amended, it was now the only documentary basis for the classification of documents.

Nixon's three classification labels were retained and a new one — "royal" — was added, reportedly in an effort to stop the disclosure of national secrets.

The new designation was to be applied to information stemming from the most sensitive of methods and sources. The information was to be distributed only to about 24 senior aides and to less than 10 members of Congress.

It was reported that other members of Congress as well as military officers and government officials with "top secret" clearance were unaware of the label's existence. Washington **Post** correspondent Jack Taylor quoted one source as saying, "When you establish something this restrictive, you in effect deny access to the minority party, which could have an effect on policy." Taylor wrote that the "royal" label was one of several classification levels used for communications intelligence, satellite photography, intelligence collection methods and cryptographic technology. Taylor wrote:

> The 'Royals system' is considered highly unusual by the intelligence community. It is vague and general in scope and not associated with protecting sources or intelligence collection methods. Its real effect is to protect President Carter from potential embarrassment.

Other observers said the system was intended to provide key policymakers with advanced intelligence information so they could formulate policy positions that would appear timely and responsive.

Royal label aside, the label of "top secret" was to be applied only to information the unauthorized disclosure of which could be expected to cause exceptionally grave damage to national security. The "secret" label was for information the disclosure of which could be expected to cause serious damage, and a "confidential" label referred to information whose disclosure could be expected to cause identifiable damage to national security.

If the classifier had a reasonable doubt about which designation was appropriate, or whether the material should be classified at all, the less restrictive designation was to be used, if at all.

Under Carter's order, the declassification process was, for the first time, to include a test that balanced the public's interest in disclosure against the government's need for secrecy.[18] Documents were to be declassified as early as national security considerations permitted, typically after six years, instead of the previous six to 10 years. Documents granted long-lasting classification were to be declassified after not more than 20 years, rather than the previous deadline of 30 years.

In addition, the classification of documents was to take place on a section-by-section basis so the restriction of portions of a document would not preclude declassification of non-sensitive sections.

Carter's order also stripped 11 agencies — including the Department of Health, Education and Welfare, and the Departments of Agriculture and Labor — of their classification authority. Five other departments or agencies had their authority reduced.[19]

A new government office — the Information Security Oversight Office — was established to provide overall supervision for the classification system and to report regularly to the National Security Concil and the president about the system's operation. ISOO was given the authority to re-

view agencies' procedures, files, regulations and decisions on the classification of documents.

Carter's order made it clear that classification itself was not necessarily a sufficient reason to deny access sought under the Freedom of Information Act. Agencies had to examine the requested document to determine if its release would cause identifiable harm to national security.[20]

Finally, Carter's order included sanctions of up to 10 years imprisonment or a fine of up to $10,000, or both, for the unlawful disclosure of classified information.

Carter's order was described by Sen. Joseph Biden, D-Del., chairman of the Senate Intelligence Subcommittee on Secrecy, as a substantial improvement over the Nixon order. Biden said that, for the first time, the entire intelligence community had been brought under a single classification policy.

The National Archives, for its part, estimated that the speedier declassification process required by the order would remove the secrecy stamp from an extra 250 million documents within the decade.

REAGAN'S EXECUTIVE ORDER

With the issuance of President Ronald Reagan's Executive Order #12356, that estimate by the National Archives may not come to pass.

Gone is the presumption of the Carter order that a document must likely cause identifiable damage to national security before it could be classified.

Gone is the practice of opting for a lower-security classification in times of doubt, for Reagan's order says:

> If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified pending a determination by an original classification authority. . . . If there is reasonable doubt about the appropriate level of classification, it shall be safeguarded at the higher level of classification pending a determination by an original classification authority. . . .

Gone is the Carter order's balancing test that required the government to weigh the public interest against national security concerns.

The Reagan order did retain the standard "top secret," "secret," and "confidential" labels. It also added three additional categories of information qualifying for classification.

The three new categories are for material on "the vulnerabilities or capabilities of systems, installations, projects or plans relating to the national security"; cryptology; and information in government records that was obtained from confidential sources.

Reagan's order also continued the Carter policy of protecting basic scientific information from classification. Strong lobbying efforts by post secondary education and scientists' groups helped to reinstate that protection of basic research data, which had been eliminated in an early draft of the order.

However, Reagan's order sharply departed from Nixon and Carter-era policy by eliminating specific time limits for the declassification of materials. Reagan's order states, "Information shall be classified as long as required by national security considerations."

In addition, Reagan's order permitted the classification of material after a request for the information had been made under either the Freedom of Information Act or the Privacy Act of 1974.

The Center for National Security Studies' Allan Adler said the removal of a time limit for declassification until the National Archives — which is up to 40 years behind its acquisitions — reviews the documents will pose special problems for historians: "It means that what's classified remains classified. There are no broad lines being drawn to indicate to a scholar, or journalist, or scientist, or anyone else, when he can anticipate when material will be declassified."

The director of records declassification for the National Archives, Edwin A. Thompson, said Reagan's order would halt the declassification program begun by previous administrations: "The whole program is, for all intents and purposes, dead. Systematic review as we've known it since 1972 will essentially wither and become a thing of the past."

Adler said that by dropping the Carter requirement that declassification policies be given comparable emphasis with classification policies, Reagan's order has rendered declassification the "stepchild" of the two. Adler wondered why that change was necessary, since budget cuts at the National Archives would have hindered that process anyway:

> I think this administration basically has made a decision that. . . particularly in the areas of national defense and foreign policy, it has found itself truly wading in areas of extreme public controversy. It wants to have the choice of how much should be released to the public and when. Basically, they've decided when they're doing things that are very controversial, it (access) doesn't help.[21]

Fears were expressed, particularly by press organizations, that the new classification system would effectively allow the administration to eviscerate the Freedom of Information Act. Those fears were based, in part, on the FOIA exemption for information classified under separate statutes.

Adler said such an undermining of the FOIA is especially serious because it tantamount to a signal to the executive branch, agencies and the courts that they do not have to be specific in their reasons for denying access to information: "The courts are going to have to be pulling teeth from agencies as to why particular information, if disclosed, would harm national security."[22]

Virtually all CIA operations, it was feared, would be exempt from disclosure under the FOIA because the Act exempts materials classified under criteria established by executive order.[23]

CRITICISMS OF CLASSIFICATION

Not only was Reagan's executive order hotly contested,

the entire classification system itself has become a center of controversy. With the publication of the **Pentagon Papers**, the American public became acutely aware of the practice of burying information away from the public's view.

Classification has been used to conceal political mistakes, embarrassment and bureaucratic confusion. There has been over-classification, random stamping of innocuous documents and a lack of an orderly and effective declassification system.

One unnamed CIA official, who testified in the **Pentagon Papers** case, has said "most of what is classified is political secrets." While some documents dealt with such legitimate concerns as sensitive codes, the "rest is a bunch of baloney; it's policy-posturing," the official said.

Former CIA agent Victor Marchetti's book, **CIA and the Cult of Intelligence**, and the 1972 court case that followed its publication, underscored the account of witnesses who said classification concealed more embarrassments and blunders than state secrets.[24]

The New York **Times**, as have other publications, long has reported that presidents and other officials have regularly leaked classified documents to suit partisan political goals:

> The classification system has been used to deprive the American people of information which later is sold to them by the officials they elected. . . . Yet the information is denied to Americans when it might be pertinent to the opinions they hold and they way they express those opinions at the ballot box.

An ironic example of declassification being used to suit political purposes was offered by the **Press Censorship Newsletter**, which reported the CIA's finding that "by declassifying additional sensitive files relating to prior events — mainly the Bay of Pigs, the Cuban Missile Crisis, and the fall of the Diem Government in South Vietnam — it (the White House) sought to obtain material helpful in neutralizing critics. . . ."

One result of such political control over information says the Louisville **Courier-Journal and Times Magazine**, is an American public that is less-informed than our nation's purported enemies:

> The North Vietnamese, the Chinese and the Russians knew all about the CIA war in Laos; only the American Congress and electorate were kept in the dark. It is also true that the secrecy system has been a fertile source of blunder and folly in foreign policy.

Classification succeeds in barring public access to massive amounts of government information. The House Committee on Government Information, disclosed that in 1976 the executive branch classified 4.5 million documents, totalling an estimated 45 million pages. Said David Wise, a reporter specializing in intelligence activities:

> At a conservative estimate, there would be 100,000,000 classified documents in government files. The Pentagon's chief classifier has testified that the Defense Department has more than one million cubic feet of classified documents, the equivalent, if stacked, of 2,297 Washington monuments.[25]

There is no agreement on how many documents have been classified. A General Accounting Office study found that while agencies reported 4.5 million classifications, the actual figure was much higher — 70 million to 100 million or more. Even then the figures were misleading, the GAO said, because the three agencies repsonsible for 97 percent of the classifications — the CIA and the Departments of Defense and Energy — were not adequately represented.

One reason asserted as causing such over-classification is its tendency toward randomness. Asked in court how he classified documents, Pentagon Papers Task Force Director Leslie Gelb said: "The only instruction I had was a movie, the theme of which was, 'beware of blondes who may be excessively friendly — they may be Russian spies.' "[26]

The cost of classification is not inconsequential. In 1972 it was estimated that operating the security classification system of the Pentagon and three other departments cost $126 million a year — nearly double the departments' annual expenditure for public information programs.[27]

Arthur Schlesinger Jr. has concluded that the classification system is hopelessly out of control because the only control present has been exercised through executive orders. He says Congress has the authority to control classification, but has not chosen to exercise that power.[28]

FOOTNOTES

1. Allan R. Adler, Center for National Security Studies, Washington, D.C., telephone interview, 9 April 1982.
2. Don R. Pember, "Founders (meeting in secret) protected our right to publish, but not to gather the news," **ASNE Bulletin**, (December-January 1979).
3. Ibid.
4. **The Louisville Courier-Journal and Times Magazine**, 20 February 1972.
5. Norman Dorsen and Stephen Gillers, eds., **Government Secrecy in America: None of Your Business**, (New York: Viking Press, 1974), p. 62.
6. Ibid.
7. Ibid., p. 10.
8. Ibid., Office of War Information Regulation No. 4, September, 1942.
9. Jeanni Atkins and Belvel J. Boyd, "Classification Re-examined," **Freedom of Information Center Report No. 332**, January 1975.
10. Dorsen and Gillers, P. 64.
11. Atkins and Boyd.
12. **Freedom of Information Center Report No. 336**, reprinted in the **Congressional Record**, (1 August 1975), p. S-15064.
13. Ibid.
14. G. Fischer, "Information Security Oversight Office: Policing Government Information," (M.A. Plan B project report, University of Missouri-Columbia Journalism School, December, 1980).
15. **Federal Register**, Vol. 411, No. 201 (15 October 1976).
16. **Access Reports**, Vol. 2, No. 20 (18 October 1976), p. 10.
17. Executive Order No. 12065, **Federal Register**, Vol. 43, No. 128, (3 July 1978).
18. White House fact sheet (29 June 1978), p. 3, cited in G. Fischer.
19. **Miami Herald**, (30 June 1978), p. 2A.
20. **Access Reports**, Vol. 4, No. 14 (11 July 1978), p. 3.
21. Telephone interview with Allan Adler.
22. Ibid.
23. Center for National Security Studies Director Morton H. Halperin said (**Access Reports**, Vol. 8, No. 2 [20 January 1982]) that the draft order's proposed expansion of the category of information presumed to be classified to include "information relating to intelligence sources and methods" — classification categories (a) (4) in the final Reagan order — would accomplish the CIA's effort to exempt itself from the Freedom of Information Act.
24. Atkins and Boyd.
25. **The Center Magazine** (July-August 1977), pp. 8-16.

26. Los Angeles Times, 30 April 1973.
27. The Nation, 26 August 1972.
28. Arthur Schlesinger Jr., New York Times Magazine, (6 February 1972), p. 12 ff.

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* * **FOI Digest Index**. 1970 — 1979, February 1980.
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